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\$279 Mil. Hedge Fund Case a Challenge for Phila. Lawyers

BY ZACK NEEDLES

Of the Legal Staff

Representing plaintiffs who have personal knowledge of the subject of their case is not a luxury to be taken for granted.

Keith R. Dutill would know.

The Stradley Ronon Stevens & Young partner was one of the lead plaintiffs attorneys in a massive financial fraud suit in which his Stradley Ronon colleague, C. Clark Hodgson Jr., had been appointed receiver for a commodity pool operator.

But prior to his appointment, Hodgson had never even heard of some of the parties involved in the suit, so getting background to build a case meant having to dig a little deeper than usual.

"Everything we got, we got by subpoenaing third parties and interviewing witnesses," said Dutill, who works in Stradley Ronon's Malvern, Pa., office.

Those efforts eventually culminated in a handful of legal actions that led to hundreds of millions of dollars in recovered losses for allegedly defrauded investors.

Now, the original suit that started it all has likely come to a close with U.S. District Judge Michael M. Baylson's supplemental consent and default judgment orders requiring that an allegedly fraudulent hedge fund trader and his commodity pool operator pay more than \$279 million to investors as well as more than \$20 million in civil monetary penalties.

Though more than half of that money will probably never materialize because of the trader's recent bankruptcy, the orders cap off a lawsuit that sat unanswered for more than three years.

According to Dutill, *CFTC v.*



DUTILL

Eustace, et al., began in June 2005 when the U.S. Commodity Futures Trading Commission, or CFTC, filed suit against hedge fund trader Paul Eustace of Ontario, Canada, and the now defunct commodity pool operator he controlled, Philadelphia Alternative Asset Management Co., or PAAMCo., alleging fraud in the failure of a Cayman Islands hedge fund.

Hodgson was appointed the receiver for PAAMCo. and both PAAMCo.'s and Eustace's assets were frozen.

Soon after his appointment, Dutill said, Hodgson retained Stradley Ronon and set out to recover much of the approximately \$280 million investors had lost, recouping a total of about \$76 million by selling off futures positions that were held by the fund.

According to Dutill, an investigation into the collapse of the hedge fund, spearheaded by Stradley Ronon partners Michael J. Cordone and Lee A. Rosengard, commenced.

In May 2006, as a result of the investigation, Hodgson, as receiver, filed suit against

futures commodity merchant Man Financial Inc., now known as MF Global Inc., alleging the company had complied with Eustace in an alleged scheme to hide trading losses from investors by putting winning trades in a disclosed account and losing trades in an undisclosed Man Financial account.

Dutill said it was at this point that he joined Cordone and Rosengard as lead counsel on the case.

According to Dutill, the judge immediately ordered the parties in *Hodgson v. Man Financial Inc.* to accelerate the deposition process, resulting in a number of situations where Dutill and Rosengard were taking depositions at the same time in different cities.

"We certainly supported the effort to move quickly," said Dutill. "The losses to the investors were so enormous and the interest of all the investors globally was so keen, we did whatever we could to expedite the process."

But it wasn't easy, he said.

According to Dutill, one of the main hurdles in the suit was the suit itself, which was really the product of the attorneys' inability to sue Eustace directly.

"It was [difficult] because Paul Eustace was the architect of the fraud but he was an individual who, pretty quickly after this broke, filed for bankruptcy in Canada," Dutill said. "The litigation focused on other entities that we believed had some responsibility for what had happened. The case was vigorously defended by each of the parties."

The suit also required the help of a significant number of lawyers from Stradley Ronon's litigation and bankruptcy practices and it demanded a large chunk of many of those attorneys' time, he said.

"The core team that worked on this devoted virtually all of their professional time for 18 months or so to various matters that we had going for the receiver," Dutill said.

Another challenge was keeping the investors, who were scattered throughout North America, Europe and Asia, informed as the case progressed, he said.

To do this, Dutill and his colleagues met with them as a group in London at one point and also maintained a Web site throughout the proceedings detailing the progress being made.

But the work seems to have paid off.

According to Dutill, in December 2007, shortly before the case was set to go trial, Man Financial settled for \$75 million. Subsequent settlements with additional defendants, including one with Cayman Islands-based company and hedge fund administrator UBS Fund Services for \$19 million in February, brought the total to \$96 million.

Dutill said a number of Dilworth Paxson attorneys, led by the firm's managing partner,

Stephen J. Harmelin — who had been appointed receiver ad litem in May 2007 in order to pursue the claims against Man Financial, UBS and others — played a significant role in the settlement proceedings.

According to Dutill, the total amount that has been recouped for investors so far is about \$180 million, which comprises the \$76 million in liquidated futures positions plus interest, the \$96 million in settlements and some additional monies recouped through Canadian actions.

On Aug. 13, Baylson issued a supplemental consent order requiring Eustace to pay investors \$279,245,101.39, plus post-judgment interest. Eustace was also ordered to pay a \$12 million civil penalty.

The next day, Baylson entered a default judgment for PAAMCo., which never responded to CFTC's original complaint in 2005, ordering the company to pay \$8.8 million in civil penalties and \$276,273,698.99 as restitution to investors, subject to offset by

Eustace's payments.

Both defendants' restitution obligations are to be offset by what's already been recouped by the receivers.

But Dutill said that, because of Eustace's bankruptcy, he and his client don't expect to recover much, if anything, more than what they already have.

"We did a pretty thorough investigation into all of Eustace's assets," he said. "We're comfortable, at least at this juncture, that we've recovered all that there is to recover."

He said Hodgson has already distributed about \$143 million to investors.

According to the docket for *CFTC v. Eustace, et al.*, Eustace represented himself in the matter and PAAMCo. was unrepresented.

Technically, the case could stay alive if PAAMCo. petitions to open the default judgment, but Dutill said that's unlikely, as is the possibility that Eustace will attempt to appeal the consent order. •